



ATTORNEY GENERAL OF TEXAS  
GREG ABBOTT

August 5, 2004

Mr. Marcus W. Norris  
City Attorney  
City of Amarillo  
P.O. Box 1971  
Amarillo, Texas 79105-1971

OR2004-6601

Dear Mr. Norris:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 206512.

The Amarillo Police Department (the "department") received a request for information relating to the arrest of a named individual for the offense of aggravated sexual assault. The department contends that the requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code; however, you indicate that the requestor may have a special right of access to the information. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses information made confidential by other statutes. Section 261.201(a) of the Family Code provides as follows:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). The information at issue was used or developed in an investigation of alleged aggravated sexual assault of a child and indecency with a child. Thus, we find that the information is generally confidential under section 261.201 of the Family Code. However, section 261.201(a) also provides that information encompassed by subsection (a) may be disclosed “for purposes consistent with [the Family Code] and applicable federal or state law.” *Id.* We note that section 773.0612 of the Health and Safety Code constitutes “applicable state law” in this instance.

As you acknowledge, the requestor in this case is an attorney with the Texas Department of Health (“TDH”). The requestor has informed the department that TDH seeks the information pursuant to an investigation conducted under chapter 773 of the Health and Safety Code. Subchapter C of chapter 773 pertains to the licensing of emergency medical technicians by TDH. *See* Health & Safety Code § 773.041 (person may not practice as any type of emergency medical services personnel unless certified by TDH under chapter 773). Section 773.0612 of the Health and Safety Code provides:

(a) [TDH] or its representative is entitled to access to records and other documents maintained by a person that are directly related to patient care or to emergency medical services personnel to the extent necessary to enforce this chapter and the rules adopted under this chapter. A person who holds a license or certification is considered to have given consent to a representative of [TDH] entering and inspecting a vehicle or place of business in accordance with this chapter.

(b) A report, record, or working paper used or developed in an investigation under this section is confidential and may be used only for purposes consistent with the rules adopted by the [Texas Board of Health].

Health & Safety Code § 773.0612. The individual at issue is a certified emergency medical technician. Thus, we find that the submitted documents are directly related to emergency medical services personnel for purposes of section 773.0612(a). The information you have provided reflects that TDH intends to use the requested information for purposes consistent with chapter 773 of the Health and Safety Code. We therefore determine that the requestor has a statutory right of access to the information under section 773.0612(a) of the Health and Safety Code. Consequently, if the department determines that TDH intends to use the information for purposes consistent with the Family Code, the department must release the submitted information to the requestor. *See* Open Records Decision No. 451 (1986) (specific statutory right of access provisions overcome general exceptions to disclosure under statutory

predecessor to Public Information Act).<sup>1</sup> We note that information obtained by TDH pursuant to section 773.0612(a) is confidential in the hands of TDH. *See* Health & Safety Code § 773.0612(b).

If, however, the department determines that TDH does not seek this information for purposes consistent with the Family Code, the department must withhold the information in its entirety pursuant to section 552.101 of the Government Code in conjunction with section 261.201(a) of the Family Code.<sup>2</sup> *See* Attorney General Opinions DM-353 at 4 n. 6 (1995) (finding interagency transfer of information prohibited where confidentiality statute enumerates specific entities to which release of information is authorized and where potential receiving governmental body is not among statute's enumerated entities), JM-590 at 4-5 (1986); *see also* Open Records Decision Nos. 655 (1997), 650 (1996), 440 at 2 (1986) (predecessor statute); Fam. Code § 261.201(b)-(g) (listing entities authorized to receive 261.201 information).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within thirty calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within ten calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within ten calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

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<sup>1</sup> We note that because the requestor has a special right of access to this information in this instance, the department must again seek a decision from this office if it receives another request for the same information from another requestor.

<sup>2</sup> Based on our findings with respect to section 261.201 of the Family Code and section 773.0612(a) of the Health and Safety Code, we need not reach your claim under section 552.108. *See* Open Records Decision No. 451 (1986).

will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within ten calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within ten calendar days of the date of this ruling.

Sincerely,



David R. Saldivar  
Assistant Attorney General  
Open Records Division

DRS/seg

Ref: ID# 206512

Enc: Submitted documents

c: Mr. Donald Janksy  
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(w/o enclosures)